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LETTER DATED 27 MARCH 1997 FROM THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE COMMITTEE ON RELATIONS WITH THE HOST COUNTRY ADDRESSED TO THE CHAIRMAN OF THE COMMITTEE

I request that the attached document be circulated as a document of the Committee on Relations with the Host Country.

(Signed) Victor MARRERO

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ANNEX

I. INTRODUCTION

1. On 21 March 1997, the Chair of the Working Group on parking, Ambassador Agathocleous, circulated an informal paper, a Note by the United Nations Legal Counsel on the New York City Diplomatic Parking Programme, to the members of the Working Group. The paper subsequently became an official document of the Host Country Committee, under the symbol A/AC.154/307 (hereinafter "note of Legal Counsel").

2. The United States federal authorities have worked with the City of New York to develop a parking programme that provides United Nations diplomats with fair access to parking, provides for the safety of all residents of New York, including the diplomatic community, and helps reduce traffic congestion for the benefit of all those who use New York City streets. The United States will implement the programme on a comprehensive basis so that the diplomatic community will receive the benefits of the new programme while discharging its obligation to abide by local law.

3. The United States Mission understands the frustration of those in the diplomatic community who have found unauthorized vehicles in their designated parking spaces, who cannot locate their spaces, who have received parking tickets for no obvious reason or who have had vehicles towed in error. These concerns have been heard and we believe have been taken into account in the new parking programme.

II. AREAS OF AGREEMENT WITH THE LEGAL COUNSEL

4. The United States Mission welcomes the Legal Counsel's confirmation that generally the elements of the New York parking programme are clearly within the scope of the host country's power to establish the laws and regulations governing the operation and parking of diplomatic vehicles. The United States agrees that non-observance of local laws and regulations, including those pertaining to the operation of motor vehicles and parking, can reflect poorly on the entire diplomatic community and on the Organization itself (note of Legal Counsel, para. 23). Flagrant violations of parking laws tarnish the image not only of the offenders, but of diplomats who do make every effort to park in compliance with local law and who pay parking citations (idem, para. 24). We further agree that voluntary payment of fines does not violate any principle of international law (idem, para. 26). The United States Mission further recognizes that, while the local authorities may ticket diplomatic vehicles parked in violation of the applicable law and regulations, such tickets must be, as stated by the Legal Counsel, "justifiable, non-discriminatory and in full compliance with all laws and regulations" (idem, para. 25).

5. The United States Mission will make every attempt to ensure that the programme is implemented in this manner. However, errors inevitably do and will occur, especially in the initial implementation of the programme. We urge the diplomatic community to utilize the mechanism that has been set up by the city

to review tickets, and to work constructively with the United States Mission to reduce the incidence of improperly issued tickets.

III. AREAS OF POSSIBLE DISAGREEMENT WITH THE LEGAL COUNSEL

6. The Legal Counsel's note expresses potential reservations about a few aspects of the programme. The United States Mission hopes that the following clarifications will help explain how the programme has been carefully developed to be consistent with international law obligations of the United States under the Headquarters Agreement and the Convention on the Privileges and Immunities of the United Nations ("General Convention").[1]

7. The detailed application of the general principle of privileges and immunities extended under Article 105 of the Charter of the United Nations is effected in regard to the United States through the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed on 26 June 1947 ("Headquarters Agreement")[2] (note of Legal Counsel, para. 7; see also note by the Legal Counsel dated 17 June 1983,[3] para. 11, hereinafter "note of 17 June 1983"). The Headquarters Agreement provides in article V, section 15, regarding United States responsibilities as the host State, that resident representatives "shall ... be entitled to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it".

8. In the negotiations of the Headquarters Agreement, the United Nations took the position, in the light of Article 105 of the Charter, that resident representatives of missions should enjoy the same privileges and immunities as are accorded to diplomatic envoys accredited to the Government of the United States (note of 17 June 1983, para. 12). This was the position that prevailed (idem). The words "subject to corresponding conditions and obligations" were inserted to ensure that privileges and immunities of representatives of Members would not be broader than those enjoyed by diplomatic envoys (idem, para. 26). Therefore, the United Nations representatives are entitled to no greater privileges and immunities than diplomatic envoys accredited to the United States.

9. Similarly, under section 19 of the General Convention, high-level officials of the United Nations "shall be accorded ... the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law". The United States also recognizes that it has an obligation to provide facilities for the missions and the United Nations to perform their functions and to accord United Nations officials privileges and immunities in accordance with international law. The United States does not believe that implementation of the parking programme will deprive missions or the United Nations of the ability to perform their functions or otherwise interfere with internationally recognized privileges and immunities. On 14 January 1994, a parking programme similar to that which will apply in New York was implemented in Washington, D.C. In order to minimize congestion, promote public safety and ensure fair access to parking for all in Washington, the State Department announced that it would withhold vehicle registration if fines for parking tickets issued to a vehicle more than one year prior to the annual registration

renewal date had not been paid or otherwise resolved. The State Department's Office of Foreign Missions in Washington has withdrawn the privilege of vehicle registration in those cases in which parking fines remained outstanding for at least a year. The United States experience is that Washington missions are able to function effectively in conjunction with this programme. In a similar manner, the United States as host country will not impair the ability of the resident representatives or the United Nations to function effectively.

10. It is also the view of the United States that, consistent with accepted interpretation of the Vienna Convention on Diplomatic Relations, a refusal by the United States to renew the registration of vehicles that have been parked in violation of local law does not violate the Vienna Convention. The Legal Counsel has questioned whether deregistration of diplomatic vehicles would violate article 31 of the Vienna Convention, as an enforcement measure amounting to an exercise of jurisdiction. Similarly, the Legal Counsel has asked if interference with the right to drive would be tantamount to an execution measure, again in violation of article 31. At the same time, however, the Legal Counsel has indicated that failure of a diplomat accredited to the United Nations to obey local laws need not be without consequence (idem, para. 32).

11. Article 31 of the Vienna Convention provides that diplomats are not subject to the penal, civil or administrative jurisdiction of the receiving State, whether for purposes of adjudication or execution of a sentence or judgement. The United States has consistently taken the position that driving is a privilege that can be withdrawn in case of abuse, not an absolute right. Moreover, non-renewal of the privilege of registering a given vehicle is not a measure of execution under article 31(3) of the Vienna Convention. In discussing this provision, the International Law Commission, in its report to the General Assembly at its thirteenth session, states that "the effect of immunity from jurisdiction, and of the privileges mentioned in articles 27 and 28 [inviolability of person, inviolability of residence, papers correspondence and property] is that the diplomatic agent is also immune from measures of execution ...".[4] This passage makes clear that execution refers to measures that interfere with the inviolability of the diplomat's property or person. Here the only possible claim to interference with the inviolability of a vehicle is towing it to protect public safety, which as stated in the opinion of the Legal Counsel is permitted under international law (note of Legal Counsel, para. 27). We should not lose sight of the fact that non-renewal does not affect a diplomat's own licence to operate a motor vehicle nor in any fashion affect personal inviolability or freedom of movement.

12. While the Vienna Convention protects a diplomat from the jurisdiction of the receiving State, it does not immunize the diplomat from non-jurisdictional consequences of the diplomat's action. The State Department may extend or withhold privileges in a manner to encourage compliance with local law, so long as it does not violate a substantive international law obligation of the United States. The licensing of a motor vehicle is a privilege that the United States can subject to reasonable conditions. The licence plates are the property of the United States Government. Here the United States is subjecting the privilege of motor vehicle registration to the condition that the registrant comply with local parking laws or pay parking fines associated with any failure to do so.

13. United States refusal to renew the registration of vehicles which have been parked in violation of local law and with respect to which fines have not been paid does not deny the United Nations or the permanent missions the facilities to perform their functions. The diplomatic community has avenues to avoid the non-renewal of vehicle registration, and other available means of transportation that will allow it to perform its functions. New York offers a number of alternate forms of transportation, including an extensive public transportation system and an abundance of taxicabs. In many instances, it may be most efficient to utilize public transportation to attend official functions, as it obviates the need to seek a legal parking space. Moreover, a mission or diplomat can easily avoid deregistration of a vehicle. The diplomat or mission can park legally, can pay parking fines, utilize taxis or a motor pool system.

14. Regarding the requirement that citations for parking in front of a fire hydrant be paid if, and only if, the offender receives another health and safety violation after the start of the programme, the United States Mission points out that the law prohibiting parking in front of a fire hydrant has been in effect since long before the first of this year. Diplomats have, and have had, a duty to respect local law, including that which prohibits parking in front of hydrants. In case of a fire, numerous structures, including diplomatic missions, could be destroyed if a hydrant is obstructed. The object of this aspect of the parking programme is not to penalize diplomats, but rather to provide persons who have disregarded this important safety regulation in the past with an added incentive to heed all health and safety parking regulations in the future. At the present time there is no consequence for hydrant violations received before the start of the programme. Should a diplomat with a hydrant violation park his or her vehicle in safe locations (even if otherwise in violation of law) for a year, the hydrant violation will never have any effect. The United States Mission does not view this attempt to ensure safety, with extra incentives for those who have disregarded this safety law in the past, as an unreasonable exercise of the responsibilities of the United States to ensure public health and safety. Finally, because this is a new programme, the Office of Foreign Missions intends to work with missions to ensure that individual members and missions themselves are apprised of violations in this area and are given full opportunity to pay or contest tickets before taking any action with respect to vehicles.

15. The United States Mission also wishes to clarify one aspect of the programme on which there appears to have been some confusion. The United States takes the position, as does the Legal Counsel, that the property of diplomats, the missions and the United Nations, including vehicles, is inviolable. As stated in the note of the Legal Counsel, the towing of a vehicle which is causing a public safety hazard is not legally objectionable (note of Legal Counsel, para. 27). Under accepted interpretation of the Vienna Convention, measures to protect the public safety are not inconsistent with respect for the inviolability of property. The United States Mission emphasizes that under the programme the vehicle will in fact be released to the diplomat at his or her request and without preconditions such as payment of fines. (At the current time, towing fees are not assessed by the City of New York with respect to diplomatic vehicles.) However, if the vehicle is no longer validly registered, the owner cannot legally operate the vehicle on the road. The owner must arrange for removal of his or her property at his or her own expense - the most

obvious method being to tow it from the lot. As explained above, the refusal to renew the registration of a vehicle that has been parked in violation of local law does not violate international law.

IV. CONCLUSION

16. The United States is in full compliance with its obligation under the Headquarters Agreement to extend "the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it". Similarly, the United States is in full compliance with its obligation under the General Convention to extend to high-level officials of the United Nations "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys ...". The United States Mission looks forward to working with members of the diplomatic community to implement this programme successfully.

Notes

[1] United Nations, Treaty Series, vol. 1, p. 15.

[2] Ibid., vol. 11, p. 11.

[3] Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 26 (A/38/26), annex I.

[4] Yearbook of the International Law Commission, 1958, vol. II, document A/3850, chap. III, p. 98, para. (11) of the commentary to article 29, "Immunity from jurisdiction".